



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

MAR 01 2017

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Gordon Smith Sr.
P.O. Box 1515
5 East Creek Way
Southampton, New York 11968

Re: Request for Information Pursuant to Section 308 of the Clean Water Act,
33 U.S.C. § 1318(a) - Unauthorized discharges of dredged/fill
material in tidal wetlands adjacent to Heady Creek, Shinnecock Indian Nation Territory,
Southampton, New York

Dear Mr. Smith:

The U.S. Environmental Protection Agency (EPA), Region 2, is investigating a violation of the Clean Water Act involving unauthorized discharges of dredged and/or fill material into tidal wetlands on Shinnecock Indian Nation Territory in the Town of Southampton, New York. The wetlands are located in or adjacent to the allotment that you occupy at 5 East Creek Way (Site). According to information and belief, you have allowed vehicles to access the Site and unlawfully dump construction and demolition material into tidal wetlands. This letter is a Request for Information sent pursuant to Section 308 of the Clean Water Act, 33 U.S.C. § 1318(a), as described more fully below in the "Statutory Authority and Directions for Response," to aid in EPA's investigation. The specific information that EPA requests is listed in an attachment to this letter.

You are required to respond to this request within fifteen (15) days of receipt of this letter as directed below.

Statutory Authority and Directions for Response

The Clean Water Act (CWA), 33 U.S.C. § 1291 *et seq.*, confers jurisdiction over "navigable waters," which are defined as "waters of the United States" (Section 502(7) of the CWA, 33 U.S.C. § 1362(7)). Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except as in compliance with Sections 301, 302, 306, 307, 318, 402, and 404 of the CWA.

Section 404 of the CWA, 33 U.S.C. § 1344, states that permits may be required from the Department of the Army for the discharge of dredged or fill material into navigable waters at specified disposal sites. Heady Creek, and wetlands adjacent to it, are "navigable waters" as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7). Wetlands are areas included under the definition of "waters of the United States" at 33 C.F.R. § 328.3(b), which defines the term "wetlands" to mean "those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions." Dredged/fill material constitutes a "pollutant" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and the discharge of such material in waters of the United

States constitutes a “discharge of pollutants” as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12). Discharges of dredged/fill material in navigable waters without prior authorization from the Department of the Army pursuant to Section 404, constitute violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Section 308(a) of the CWA, 33 U.S.C. § 1318(a), provides that whenever required to carry out the objectives of the CWA, including determining whether or not a person/agency is in violation of the CWA, the Administrator of EPA shall require that person/agency to provide information as may reasonably be required to make such a determination. Therefore, pursuant to the authority vested in the Administrator of EPA under Section 308(a) of the CWA, 33 U.S.C. § 1318(a), which has been duly redelegated to me, you are required to provide the information described in the attachment to this letter within fifteen (15) calendar days of receipt of this letter.

You should be aware that failure to provide the requested information or providing misleading or false information may subject you to enforcement action, including the issuance of orders against you requiring compliance, the imposition of civil or administrative penalties, or the imposition of criminal fines or penalties. The information you provide may be used by EPA in administrative, civil, or criminal proceedings (*see* 33 U.S.C § 1319).

If you so desire, you may assert a business confidentiality claim covering all or part of the information being requested. The claim may be asserted by placing on (or attaching to) the information, at the time you submit it to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as “trade secret,” “proprietary,” or “company confidential.” Allegedly confidential portions or otherwise non-confidential documents should be clearly identified, and may be submitted separately to facilitate identification and handling by EPA.

If you desire confidential treatment only until a certain date or until the occurrence of a certain event, the notice should so state. Information covered by a claim of business confidentiality will be disclosed by EPA only to the extent, and by means of the procedures, set forth in Subpart B, Part 2, Chapter I of Title 40 of the C.F.R. (40 C.F.R. §§ 2.201 *et seq.*). If no business confidentiality claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to you.

This information is not subject to the approval requirements of the Paperwork Reduction Act of 1989, 44 U.S.C. §§ 3501 *et seq.*

Any documents to be submitted by you as part of this information request shall be sent by certified mail or its equivalent and shall be signed by an authorized representative of the respective entity (*see* 40 C.F.R. § 122.22), and shall include the following certification:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

All information required to be submitted pursuant to this information request shall be sent by certified mail or its equivalent to the following address:

Stephanie Andreescu
Wetlands Enforcement Officer
U.S. Environmental Protection Agency, Region 2
Watershed Management Branch
290 Broadway, 24th Floor
New York, NY 10007-1866

If you would like to discuss this matter, please contact me directly at (212) 637-3788. For further information or to answer specific questions, please contact Stephanie Andreescu of my staff at (212) 637-3818, or have legal counsel contact Lauren Fischer, Assistant Regional Counsel, at (212) 637-3231.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Balla", with a long horizontal flourish extending to the right.

Richard P. Balla, Chief
Watershed Management Branch

Enclosure

Attachment

Clean Water Act Section 308 Information Request

EPA's Request for Information pursuant to Section 308(a) of the Clean Water Act, 33 U.S.C. § 1318(a) for Mr. Gordon Smith Sr., regarding unauthorized discharges of dredged/fill material in tidal wetlands adjacent to Heady Creek, Shinnecock Indian Nation Territory, Southampton, New York.

In the questions below, please refer to the following defined terms:

- "you" or "your" means Mr. Gordon Smith, Sr. and his agents.
- "Site" means the allotment located at 5 East Creek Way and/or wetlands adjacent thereto, Shinnecock Indian Nation Territory, Southampton, New York.
- "Work" means discharges of dredged or fill material or earthmoving activities at the Site.

If you are unable to give a detailed and complete answer or to provide any of the information or documents requested, please indicate the reason for your inability to do so.

Please provide the following information:

1. A description of the Work conducted at the Site.
2. For the description given in response to Question 1, also include the following information:
 - a. All dates and times at which the Work took place;
 - b. A description of how the Work was accomplished, including the types of equipment used for the Work;
 - c. A detailed description of the nature and purpose of the Work;
 - d. A description of dredged or fill material imported to the Site, including its source, volume, and composition;
 - e. Identification of which contractors and/or individuals ordered, directed, supervised, and/or accomplished the Work, or any part thereof;
 - f. Copies of all documents related to the Work, including any agreements, contracts, receipts, and invoices used in planning and executing the Work; and
 - g. A description of any oral agreements related to the Work.
3. Any other facts or information that you deem pertinent to this investigation.